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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

In Re:

RACHAEL EARL,

Debtor

RACHAEL EARL, an individual,

Plaintiff,

vs.

US BANK NATIONAL ASSOCIATION AS
TRUSTEE FOR GSAA 2007-9 BY ITS
ATTORNEY IN FACT WELLS FARGO
BANK N.A., SUCCESSOR BY MERGER TO
WELLS FARGO HOME MORTGAGE INC.,
MICHAEL A. BOSCO, JR. AS TRUSTEE,
PAULA GRUNTMEIR, MARICOPA
COUNTY NOTARY PUBLIC, AND DOES
1-10,000;

Defendants.

NO: 2:10-ap-02243-SSC

**FIRST AMENDED ADVERSARIAL
COMPLAINT IN SUPPORT OF
INJUNCTION, TO SET ASIDE
TRUSTEE SALE, TO CANCEL
TRUSTEE'S DEED, TO QUIET
TITLE TO REAL PROPERTY,
AND FOR ACCOUNTING.**

Honorable Sarah Sharer Curley

DEMAND FOR JURY TRIAL

INTRODUCTION

1
2 1. Plaintiff RACHEL EARL, for her First Amended Complaint states and
3 alleges the following causes of action against Defendants U.S. BANK NATIONAL
4 ASSOCIATION AS TRUSTEE FOR GSAA 2007-9 BY ITS ATTORNEY IN FACT
5 WELLS FARGO BANK N.A., SUCCESSOR BY MERGER TO WELLS FARGO
6 HOME MORTGAGE INC. ("US BANK"), and DOES 1-10,000.
7

8 2. The primary purpose of this complaint is to seek information from
9 Defendants regarding the proper parties to this action, if any, and until proper parties are
10 identified, Plaintiff respectfully requests the Court to restrain Defendants from causing
11 the Plaintiff and her family further irreparable harm and loss.
12

13 3. Plaintiff Rachael Earl is informed and believes that Defendant US BANK is
14 not the real party in interest in this case. Plaintiff further believes that the foreclosure
15 sale of her home was improper, with, among other things the Trustee's Deed Upon Sale
16 being invalid because it was improperly executed and notarized by Defendant US BANK
17 and/or their agents.
18

19 4. Plaintiff has been irreparably harmed gross misconduct on the part of
20 Defendant US BANK, its servicers and agents.
21

22 5. This is a contested matter in which Plaintiff seeks injunctive relief and
23 seeks to recover her rightful property from Defendants.
24

PARTIES

25 6. Rachael Earl filed a voluntary petition for relief in this matter under
26 Chapter 13 of the Bankruptcy Code on August 27, 2010.
27
28

1 7. Plaintiff is and at all times relevant to this Complaint was the lawful owner
2 of real property commonly known as 1311 South Claiborne Avenue, Gilbert, AZ 85296
3 and it remains her primary residence. The legal description for the Property is:
4

5
6 Lot 196, AGRITOPIA, PHASE 2A, according to Book 691 of Maps, Page 4, and
7 Affidavit of Correction recorded as 2004-1145385, records of Maricopa County,
8 Arizona.
9

10
11 8. Defendant US BANK at all relevant times mentioned in this complaint, was
12 engaged in the banking and mortgage lending business, and in the business of owning,
13 separately and as alleged trustee for others, mortgage loans in Arizona, including in
14 Maricopa County. Defendant US BANK from at least the time of execution on January
15 15, 2009 claimed to be and purported to act as the holder of the Note alleged by virtue of
16 an Assignment recorded with the Maricopa County Recorder's office on or about January
17 16, 2009 as instrument No. 20090041298.
18

19
20 9. Defendants DOES 1-10,000 are individuals and/or corporations who are
21 presently unidentified heirs, assigns, successors in interests and/or servicing agents or
22 other agents who hold or purportedly hold an interest in the Deed of Trust and lien arising
23 thereto allegedly secured by the Plaintiff's Residential Real Property held by the
24 Defendants, or who participated in the transfer, sale, or delivery of Plaintiff's Residential
25 Real Property to the Defendants.
26
27
28

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 157 and 1412 and 11 U.S.C. § 1334.

11. This matter is a “core” proceeding under § 157(A), matters concerning Administration of the estate, 157(B), allowance or disallowance of claims, 157(K), determination of the validity, extent, or priority of liens, and 157(O) other proceedings affecting the...adjustment of the debtor-creditor or the equity security holder relationship. Venue in the District of Arizona is proper.

FACTUAL ALLEGATIONS

12. On or about April 12, 2007, Plaintiff executed a Deed of Trust for the Subject Loan in the face amount of \$500,000, naming Rachael A. Earl as “Borrower/Trustor,” naming “Freedom Home Mortgage Coporation (FN)” as “Lender,” Arizona Title Agency, Inc. as “Trustee,” and Mortgage Electronic Registration Systems, Inc. (“MERS”) “acting solely as a nominee for Lender and Lender’s successors and assigns” and as “Beneficiary.”

13. At that time, Plaintiff was told that she was getting the best loan she could get and Defendants promised that they were acting in Plaintiff’s, and only Plaintiff’s best interest.

14. The Deed of Trust was subsequently recorded with the Maricopa County Recorder’s Office on or about April 17, 2007 as Recording Number 20070446763. The Deed of Trust outlines, among other things, very specific guidelines for acceleration of

1 the alleged Note. To Plaintiff's best knowledge, no Note was ever recorded with the
2 Maricopa County Recorder's Office.

3 15. Plaintiff has never received, nor does she believe exists, a Notice of Default
4 from the Defendants as set forth and required in the Deed of Trust, nor does she believe
5 that she ever was in default with regards to the Property at the time of acceleration by
6 Defendants, their agents, and servicers.

7 16. At some unknown point during July 2008, the original Trustee of the Deed
8 of Trust, Arizona Title Agency Inc., went out of business. Plaintiff believes no evidence
9 exists or was ever recorded to name a purported subsequent trustee until January of 2009,
10 a violation of A.R.S. § 14-10704 and 33-804.

11 17. On or about January 15, 2009, Defendants' agents executed an Assignment
12 claiming to transfer to Defendant US BANK "all beneficial interest under that certain
13 Deed of Trust dated 04/12/2007... Together with the Note or Notes therein described or
14 referred to, the money due and to become due thereon with interest, and all rights accrued
15 or to accrue under said Deed of Trust." The Assignment is signed by Jennifer Hamlin as,
16 "Assistant Secretary for MERS, Inc."

17 18. Plaintiff retained the services of banking and mortgage expert William
18 McCaffrey who has reviewed Defendant's alleged Assignment and states that that "GS
19 Mortgage Securities Corp Asset-Backed Certificates series GSAA Home Equity Trust
20 2007-9 [was] created (and closed) in 2007." It is Mr. McCaffery's opinion that "The
21 Assignment date is almost certainly incorrect." *See Affidavit of William McCaffrey,*
22 attached as **Exhibit 1**.

1 19. Filings with the Securities and Exchange Commission, including the Free
2 Writing Prospectus (FWP) for GSAA 2007-9 support Mr. McCaffrey's findings that the
3 GSAA 2007-9 trust had a "Closing Date: On or about September 28, 2007" and a "Cut-
4 Off Date" of September 1, 2007, and further discloses that U.S. Bank was not in fact the
5 Trustee over the trust, but rather lists Citibank, N.A. as Trustee with U.S. Bank as one of
6 many Custodians.
7

8 20. The Assignment relied upon by US BANK is purported to have been
9 executed on January 15, 2009. The Assignment includes the line, "Effective Date:
10 12/08/2008." It was recorded with the Maricopa County Recorder's Office as Recording
11 Number 20090041298.
12

13 21. Plaintiff believes and therefore avers that this Assignment was backdated
14 and filed solely for the purpose of attempting to correct the record.
15

16 22. Upon information and belief, at all relevant times, Jennifer Hamlin is or
17 was an employee of Tiffany and Bosco, and was, until recently listed on their website as
18 the contact for financial services sales reports.
19

20 23. Plaintiff believes additional evidence exists that both Jennifer Hamlin and
21 Mark S. Bosco are allegedly employed concurrently in the position of Assistant Secretary
22 for MERS, Inc., and execute documents simultaneously while both being employed with
23 the exact same job title and also being employed by Tiffany and Bosco, P.A.
24

25 24. On January 15, 2009, the same date that the Assignment was executed, a
26 Substitution of Trustee was also executed purportedly transferring the duties of Trustee
27 from Arizona Title Agency, Inc. to Michael A. Bosco, Jr. as successor trustee.
28

1 25. The Substitution of Trustee is executed by Mark S. Bosco, Attorney at Law
2 “By Limited Power of Attorney” for U.S. Bank National Association, as Trustee for
3 GSAA 2007-9 by its Attorney in fact Wells Fargo Bank, N.A., successor by merger to
4 Wells Fargo Home Mortgage Inc. The document is recorded with the Maricopa County
5 Recorder’s office as Recording Number 20090041299.

7 26. Plaintiff has reviewed the recorded Powers of Attorney for U.S. Bank
8 National Association, as Trustee and can find no evidence that Wells Fargo Bank, N.A.
9 or Mark S. Bosco have a valid Power of Attorney granting them authority to act on behalf
10 of Defendant US BANK.

12 27. On the same date, January 15, 2009, a Notice of Trustee’s Sale was
13 allegedly executed by Michael A. Bosco, Jr., Attorney at Law as Trustee/Successor
14 Trustee listing a sale date of April 17, 2009, and a time of 10:00 A.M.

16 28. On or about August 4, 2009, Plaintiff sent a Qualified Written Request
17 (QWR) under RESPA requesting an accounting.

18 29. Pursuant to RESPA, when a borrower submits a QWR, the lender has 20
19 days to acknowledge receipt of the QWR and, within 60 days, to perform an adequate
20 investigation, provide the requested information, make any corrections to the borrower’s
21 account, including crediting any erroneous late charges or penalties, provide written
22 notification of these credits, provide a written explanation of why the account is correct,
23 and include the name and telephone number of the service representative.

26 30. Wells Fargo acting in the capacity of alleged servicer of the alleged
27 mortgage loan failed to respond to Plaintiff’s QWR, and the § 2943 demand.

1 31. On January 7, 2010, Plaintiff learned that her home was set to foreclose at
2 10:00 A.M. that very day. She contacted Tiffany and Bosco's office and spoke with
3 "Pat" at approximately 9:20 A.M., who reviewed the property in her system and informed
4 the Plaintiff that the scheduled sale date had been postponed to February 9, 2010.
5 Plaintiff viewed public tax records for the property and confirmed that the sale date had
6 in fact changed to February 9, 2010.
7

8 32. Plaintiff began to compile documents and to prepare a pro se complaint
9 against Defendant US BANK, whom she was not previously aware had any right to her
10 property and had never notified her of any default. Plaintiff intended to file such
11 complaint of opposition prior to the newly listed sale date of February 9, 2010, in
12 accordance with A.R.S. § 33-811(C).
13
14

15 33. In the meantime and without Plaintiff's knowledge, on January 14, 2010, a
16 Trustee's Deed Upon Sale was allegedly executed. The Deed was purportedly executed
17 by Michael A. Bosco, Jr. and given an exact date and timestamp of "Date: 2010.01.14
18 04.50.37 -07:00." The Deed was also purportedly notarized and by Paula Gruntmeir and
19 given an exact date and timestamp of "Date: 2010.01.14 04.50.37 -07:00," the very same
20 second that Mr. Bosco's signature was applied to the document.
21

22 34. Michael A. Bosco, Jr. alleges to be the Trustee over the subject Property,
23 and acting as an agent on behalf of Defendant US BANK.
24

25 35. Paula Gruntmeir is a Notary Public and Electronic Notary Public registered
26 with the office of the Arizona Secretary of State, registered under Commission Numbers
27 282070 and 289185, listing her business name to be Tiffany and Bosco, P.A.
28

1 36. The recorded Deed contains the language, “Said property **was** sold by
2 Trustee at Public auction on January 14, 2010, at the place named in the Notice of
3 Trustee’s Sale. ‘Grantee, **being** the highest bidder at such sale, **became** the purchaser of
4 said property and **made** payment thereof to said Trustee for the amount bid, namely
5 \$315,000.00.” (emphasis added) The language used within the Deed would allege that
6 the document was signed AFTER the sale occurred, though in fact, it was electronically
7 signed several hours *before* the sale even took place.
8

9 37. The recorded Deed contains the affirmation: “IN WITNESS WHEREOF,
10 MICHAEL A. BOSCO, JR., as Trustee, has this day caused his name to be hereunto
11 affixed,” followed by the purported digital signature of Michael A. Bosco, Jr.
12

13 38. The recorded Deed also contains the following language, “The foregoing
14 instrument was acknowledged before me this 14th day of January, 2010, by Michael A.
15 Bosco, Jr., as Trustee,” followed by the purported digital signature and notary of Paula
16 Gruntmeir described above.
17

18 39. Plaintiff believes and therefore avers that the Trustee’s Deed Upon Sale
19 was executed at 4:50 A.M. and was executed by a computer that was set to “batch”
20 process several Deeds and other documents very quickly and without review or actual use
21 and input of a digital signature code on each document using Michael A. Bosco, Jr.’s and
22 Paula Gruntmeir’s digital signature key code.
23

24 40. The recorded Deed appears to be fraudulent on its face pursuant to the
25 guidelines for Trustees’ Sales set forth in (but not limited to) A.R.S. § 33-803.01
26 regarding delegation of duties for preparation and execution of documents, 33-808(B)
27
28

1 regarding the time such sales are legally allowed to be conducted, 33-810(A) regarding
2 what constitutes execution, delivery and recordation to the trustee's deed, 33-811(A) and
3 (B) regarding the time that such Deed must be executed, and 33-816 providing for
4 limitation on the timeframe allowed for commencement of the sale. Moreover, upon
5 information and belief, the digital signatures violate Arizona's Electronic Transactions
6 Act, A.R.S. §§44-7001 *et seq.* and the Arizona Electronic Statute(s), A.R.S. §§ 41-351 *et*
7 *seq.*
8

9
10 41. Plaintiff has retained the services of forensic document expert Curtis
11 Bagget who has reviewed the Deed of Trust documents in this matter. Plaintiff includes
12 the declaration of expert witness Curtis Baggett, who concurs, and in his expert opinion
13 states, "I have determined the exact time stamp to indicate a time of 4:50 a.m. and 37
14 seconds, with the -07:00 designation indicating seven hours behind Greenwich Mean
15 Time, UTC, or Zulu (Military) Time, thereby designating that the time indicated reflects
16 Mountain Standard Time."
17

18 42. This defective Trustee's Deed Upon Sale was recorded with the Maricopa
19 County Recorder's office on January 15, 2010 as Recording Number 20100035162.
20

21 43. On January 19, 2010, and without any prior knowledge of the sale and the
22 executed Trustee's Deed Upon Sale, Plaintiff returned to her residence in the afternoon to
23 find the Deed and a letter from Realtor Judy Johnson duct taped to her door demanding
24 that she vacate the premises, as her property purportedly had been sold at auction on
25 January 14, 2010. Plaintiff had no prior knowledge to the sale being moved to January
26 14, 2010, and had relied upon Pat's indication and public records that showed the date to
27
28

1 be February 9, 2010. Plaintiff reasonably and detrimentally relied on “Pat’s”
2 representation and an agent for US Bank as an employee of Tiffany & Bosco, PA.

3 44. On January 19, 2010, Plaintiff contacted Tiffany and Bosco and was again
4 connected with “Pat,” who answered her call. Plaintiff alerted Pat to the misstatements
5 made on January 7, 2010 regarding the sale date being moved to February 9, 2010, not
6 January 14, 2010. Pat confirmed that “at one time” the sale date was listed as February 9,
7 2010, but the Lender decided to move the date up. Pat requested that the Plaintiff contact
8 Christopher Reich, who she claimed was in charge of the Plaintiff’s sale.
9

10 45. Plaintiff called Christopher Reich on January 19, 2010 and was directed to
11 his voicemail. Plaintiff left a message requesting Mr. Reich to call her back immediately.
12 She then emailed Mr. Reich expressing her concerns and attaching a scanned version of
13 the printed public tax records that showed the sale date of February 9, 2010. Mr. Reich
14 responded via email asking Plaintiff to call him to discuss the matter. Plaintiff again
15 called Mr. Reich and again reached his voicemail. Plaintiff then emailed Mr. Reich again
16 explaining the situation in detail. Again, Mr. Reich requested that Plaintiff call him
17 directly to discuss the matter.
18
19
20

21 46. Plaintiff again called Mr. Reich and was able to speak with him, explaining
22 the situation and the misrepresentations that were made to her by Pat. Mr. Reich
23 responded that the Lender decided to push the sale date up, and that “they can do
24 whatever they want.” Plaintiff requested that the sale be overturned due to
25 misrepresentations by Tiffany and Bosco regarding the sale date to which she was told
26 that it would not be overturned.
27
28

1 47. Defendant US BANK proceeded to file an action for Forcible Entry and
2 Detainer on February 1, 2010, and despite lack of personal service to the Plaintiff,
3 proceeded with a Forcible Detainer Hearing on February 22, 2010.
4

5 48. Plaintiff voluntarily filed for Chapter 13 Bankruptcy Protection as a pro se
6 Debtor on March 4, 2010 after being notified that she was prohibited from arguing issues
7 of title in a Forcible Detainer Trial.
8

9 49. Plaintiff's Automatic Bankruptcy Stay in her first Bankruptcy was lifted on
10 or about July 22, 2010.

11 50. Defendants proceeded with the Forcible Detainer Trial on August 19, 2010
12 where again Plaintiff by and through counsel was prohibited from arguing issues of title.
13

14 51. Plaintiff requested voluntary dismissal of her Chapter 13 Bankruptcy on
15 August 26, 2010.

16 52. Plaintiff filed this voluntary petition for Chapter 13 Bankruptcy on August
17 27, 2010.
18

19 53. Plaintiff filed her Adversary Proceeding on December 13, 2010.

20 54. On or about September 8, 2010, Defendant US BANK filed a Motion for
21 Relief from Stay. The hearing on the motion was later vacated.

22 55. On or about January 28, 2011 Plaintiff received via US Mail a 1099-A
23 listing Federal National Mortgage (aka "Fannie Mae") as the "Lender" claiming the tax
24 credit for her property. The date of lender's acquisition of the property is listed as
25 1/14/10, the date of the purported Trustee's Sale to Defendant US BANK. The balance
26 of alleged outstanding principal owed to Fannie Mae is listed as \$492,385.84, with the
27
28

1 fair market value of the property listed as \$315,000, the same price allegedly paid by
2 Defendant US BANK for the property on the same date. The 1099-A also contains the
3 question, "Was borrower personally liable for repayment of the debt?" to which there is
4 an "X" next to "Yes." The alleged "Borrower" is listed as Rachael A. Earl.
5

6 56. On or about January 28, 2011 Plaintiff received via US Mail a 1099-C form
7 listing Wells Fargo Bank, N A as the "Creditor" claiming a loss via canceled debt of
8 \$177,385.84, with a cancelation date of 1/14/10, the date of the purported Trustee's Sale
9 to Defendant US BANK. The alleged "Debtor" is listed as Rachael A. Earl.
10

11 57. On or about May 9, 2011, Defendant US BANK filed the Declaration of
12 Theresa Diaz-Cochran. It is unclear what Ms. Diaz-Cochran's role or personal
13 knowledge of the purported loan is, as Ms. Diaz-Cochran, instead of adding her job title
14 into a blank area in the document, simply stamped her name for the second time on the
15 document. Ms. Cochran provides vague facts regarding Wells Fargo Bank, N.A. and
16 their involvement as the alleged servicer. Ms. Diaz-Cochran further states in her
17 Declaration that: "The property was sold at Trustee sale on January 14, 2010 and
18 reverted back to BankUnited, FSB for the amount of \$315,000." This statement
19 contradicts both the alleged Trustee's Deed Upon Sale and the 1099-A form which both
20 claim different purchasers at the purported Trustee's Sale on January 14, 2010.
21
22

23 58. Plaintiff believes and therefore avers that there are several parties claiming
24 ownership of her alleged loan and subsequently her real property. There appears to be
25 significant evidence that suggests that Defendant US BANK is NOT the Real Party in
26 Interest in this case.
27
28

1 59. On June 8, 2011 Defendant US BANK's Motion for Relief from Stay was
2 granted due to a matter of law as a result of Plaintiff not requesting an Automatic Stay
3 when two Bankruptcies were filed within the same year. Plaintiff was, however, granted
4 a Temporary Restraining Order and the ability to amend her Adversary Complaint to
5 request a permanent injunction against Defendant US BANK.
6

7 **FIRST CAUSE OF ACTION (FOR INJUNCTION)**
8

9 60. This cause of action is brought by Plaintiff Rachael Earl, an individual,
10 against Defendant US BANK, and DOES 1-10,000. Plaintiff realleges each and every
11 fact set forth in paragraphs 1-59 herein as though fully set forth and alleged herein and
12 throughout.
13

14 61. Defendant US BANK, in its alleged capacity as trustee for GSAA 2007-9,
15 claims to be the owner of the Property by virtue of a Trustee's Deed Upon Sale to the
16 Property purportedly executed on January 14, 2010 by electronic means allegedly by the
17 hand of Defendant Michael A. Bosco, Jr. as Trustee and purportedly notarized by
18 electronic means by the hand of Defendant Paula Gruntmeir, and recorded with the
19 Maricopa County Recorder's office on or about January 15, 2010 as instrument No.
20 20100035162.
21

22 62. Plaintiff alleges that the recorded Trust Deed contains material facts in
23 question that must be further examined to confirm the exact time the Deed was
24 purportedly signed, and the method by which the signatures and notary seal were affixed
25 to the Deed and by whom, if in fact affixed at the hand of a real person.
26
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1 63. Plaintiff alleges that the recorded Deed appears to be fraudulent on its face,
2 and should prevent Defendant US BANK from having the ability to dispossess Plaintiff
3 of her real property.
4

5 64. Plaintiff further alleges that the Trustee's Deed was signed by electronic
6 "batch" processing based upon additional deeds recorded with the Maricopa County
7 Recorder's Office of which there are at least 13 Deeds purported to have been properly
8 signed and notarized within approximately 39 seconds of one another, based upon the
9 timestamps under the digital signatures for Michael A. Bosco, Jr. and Paula Gruntmeir
10 that were affixed to the document. Plaintiff is aware that programs such as Adobe
11 Certified Document Services (CDS) and others have this capability.
12

13 65. Plaintiff believes that it is a physical impossibility for Michael A. Bosco, Jr.
14 and Paula Gruntmeir to read, sign, notarize and record in a notary journal the documents
15 purported to have been lawfully signed within the 2-3 seconds that each document's
16 timestamp would suggest that it was signed. Such a method of signing documents
17 constitutes a violation of the Arizona Consumer Fraud Act, A.R.S. § 44-1521.
18

19 66. Plaintiff's expert witness, Curtis Baggett, a forensic document examiner
20 has reviewed the documents regarding the Trustee's Deed Upon Sale, and will testify that
21 his conclusions regarding the Trustee's Deed Upon Sale are true. *See Baggett Affidavit*,
22 attached as **Exhibit 2**.
23

24 67. Moreover, Defendants have not and likely cannot provide a valid chain of
25 title giving Defendant US BANK any claim or interest to Plaintiff's real property as the
26 Real Party in Interest.
27
28

1 68. Defendant US BANK is not the Real Party in Interest and Holder in Due
2 Course. The 1099-A form (a government issued document) that Plaintiff received
3 regarding her real property lists Federal National Mortgage as the “Lender” claiming the
4 tax credit on her property. Wells Fargo by and through the Declaration of Teresa Diaz-
5 Cochran lists BankUnited FSB as the Holder in Due Course. These conflicting claims
6 support Plaintiff’s request for injunctive relief and an investigation into whom, if anyone,
7 is the Real Party in Interest in this case.
8

9 69. For the foregoing reasons, and the likelihood of probable success on the
10 merits and the distinct possibility of irreparable harm, coupled with the serious nature of
11 the questions raised and the balance of hardship being tipped sharply in favor of
12 beneficiaries, Plaintiff requests this honorable Court to grant a permanent injunction to
13 prevent Defendants dispossessing Plaintiff and her family from their property.
14
15

16 **SECOND CAUSE OF ACTION (TO SET ASIDE TRUSTEE SALE)**

17 70. This cause of action is brought by Plaintiff Rachael Earl, an individual,
18 against Defendant US BANK and DOES 1-10,000. Plaintiff realleges each and every
19 fact set forth in paragraphs 1-69 herein as though fully set forth and alleged herein and
20 throughout.
21

22 71. The alleged Trustee’s Sale held on January 14, 2010 was conducted
23 improperly and outside of the timeframe designated in the Arizona Revised Statutes for
24 holding Trustee’s Sales. The exact timestamps affixed to the alleged digital signatures of
25 Michael A. Bosco, Jr. and Paula Gruntmeir on the Defective Trustee’s Deed Upon Sale
26 demonstrate, among other things that the documents were illegally executed prior to the
27
28

1 Trustee's Sale. Plaintiff believes that the purported Deed is fraudulent on its face, and
2 therefore is not a valid document.

3 72. Plaintiff never received a Notice of Default and does not in fact believe her
4 alleged loan was in default at the time of the alleged Trustee's Sale. Failure to provide a
5 Notice of Default constitutes a breach of the Acceleration clause contained within the
6 Deed of Trust, a requirement before proceeding with a Notice of Trustee's Sale.
7

8 73. All of the foregoing facts alleged in this complaint resulted in the
9 purported loss by the Plaintiff of clear free title to the Property. It is a factual and legal
10 impossibility that the Trustee's Sale was conducted in accordance with Arizona Law, and
11 therefore, Plaintiff requests this court to set aside the Trustee's Sale.
12

13 **THIRD CAUSE OF ACTION (TO CANCEL TRUSTEE'S DEED)**
14

15 74. This cause of action is brought by Plaintiff Rachael Earl, an individual,
16 against Defendant US BANK and DOES 1-10,000. Plaintiff realleges each and every
17 fact set forth in paragraphs 1-71 herein as though fully set forth and alleged herein and
18 throughout.
19

20 75. Defendant US BANK claims an estate or interest in the Property adverse to
21 that of Plaintiff. US BANK's claims are without any right; and therefore, Plaintiff
22 alleges that Defendant has no estate, right, title, or interest in the Property.
23

24 76. The claims of Defendant US BANK to the Property are based on the
25 Defective Trustee's Deed Upon Sale recorded with the Maricopa County Recorder's
26 Office.
27
28

1 77. Although such deed is purported to be valid on its face, it is invalid, void
2 and voidable, and of no force or effect regarding Plaintiff's interests in the Property, for
3 the reasons set forth in the preceding paragraphs.
4

5 78. The interest or estate in the described Property claimed by Defendant US
6 Bank, based on the Trustee's Deed Upon Sale, is a cloud on Plaintiff's title in and to the
7 Property, tends to depreciate its market value, restricts Plaintiff's full use and enjoyment
8 of the Property, and hinders Plaintiff's right to unrestricted alienation of it. If the
9 Trustee's Deed is not canceled, Plaintiff will suffer serious additional injury and
10 damages.
11

12 **FOURTH CAUSE OF ACTION (TO QUIET TITLE TO REAL PROPERTY)**
13

14 79. This cause of action is brought by Plaintiff Rachael Earl, an individual,
15 against Defendant US BANK and DOES 1-10,000. Plaintiff realleges each and every
16 fact set forth in paragraphs 1-78 herein as though fully set forth and alleged herein and
17 throughout.
18

19 79. Plaintiff seeks to quiet title to the Property against all claims of all
20 Defendants. Defendants' claims are without any right, and Defendants have no right,
21 title, estate, lien, or interest in the Property. Plaintiff is credibly informed and believes
22 Defendants make claims adverse to Plaintiff's.
23

24 80. Plaintiff names as Defendants in this action all persons unknown claiming
25 (a) any legal or equitable right, title, estate, lien, or interest in the Property described in
26 the Complaint adverse to Plaintiff's title, or (b) any cloud on Plaintiff's title to the
27
28

1 Property. The claims of each unknown Defendant are without any right, and these
2 Defendants have no right, title, estate, lien, or interest in the Property.

3 81. Plaintiff prays for establishment of Plaintiff's Estate and that Defendants be
4 barred and forever estopped from having or claiming any right or title to the premises
5 adverse to Plaintiff.
6

7 **FIFTH CAUSE OF ACTION (FOR ACCOUNTING)**

8 82. This cause of action is brought by Plaintiff Rachael Earl, an individual,
9 against Defendant US BANK and DOES 1-10,000. Plaintiff realleges each and every
10 fact set forth in paragraphs 1-81 herein as though fully set forth and alleged herein and
11 throughout.
12

13 83. The amount of money (if any) owed to Defendants, and each of them, is
14 unknown to Plaintiff and cannot be determined without an accounting.
15

16 WHEREFORE, Plaintiff prays for judgment and order against Defendants, and
17 each of them, as follows:

18 1. For a preliminary and permanent injunction estopping Defendant US
19 BANK from taking any and all action to evict Plaintiff from her property;
20

21 2. That the Trustee's Sale and Deed Upon Sale be declared void as a matter of
22 law;
23

24 3. That the Court enter Judgment that Defendants have no legal claim to title
25 on the subject property;

26 4. That the Court declare that Defendants are not entitled to enforce the
27 underlying Promissory Note or the Deed of Trust;
28

20				
Case 2:10-ap-02243-SSC	Doc 17	Filed 06/13/11	Entered 06/13/11 17:48:22	Desc
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1 **ORIGINAL** of the foregoing filed
2 this 13th day of June, 2011, with:

3 **U.S. BANKRUPTCY COURT**
4 **DISTRICT OF ARIZONA**

5 230 North First Avenue, Suite 101
6 Phoenix, Arizona 85003-1727

7 **COPY** of the foregoing faxed/mailed to the
8 Following, this 13th day of June, 2011:

9 Andrew Hardenbrook
10 Snell & Wilmer, LLP
11 400 E. Van Burgen, #1900
12 Phoenix, Arizona 85003-1727
13 *Attorneys for U.S. Bank*

14 Leonard McDonald
15 Tiffany & Bosco, PA
16 2525 E. Camelback Rd., Suite 300
17 Phoenix, Arizona 85016
18 *Attorneys for U.S. Bank*

19 Russell Brown
20 3838 N. Central Ave., Suite 800
21 Phoenix, Arizona 85012
22 Chapter 13 Trustee

23 United States Trustee
24 230 N. 1st Ave., Ste. 204
25 Phoenix, Arizona 85003

26 All Creditors listed on the Mailing Matrix
27
28

EXHIBIT 1

LAW OFFICES OF KEVIN JENSEN, PLLC
ATTORNEYS and COUNSELORS at LAW
3740 EAST SOUTHERN AVE.
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Kevin Jensen, State Bar No. 021524

UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

RACHAEL A. EARL)

Case No. #2:10-bk-27333

Real Property Located:
1311 S. CLAIBORN AVENUE
GILBERT, ARIZONA
85296

AFFIDAVIT OF
WILLIAM McCaffrey

I William McCaffrey, declare as follows:

1. I am over the age of 18 years and qualified to make this affidavit. I am a resident of the State of Arizona and make this Affidavit based on my own personal knowledge. I have no direct or indirect interest in the outcome of the case at bar for which I am offering my observations, analysis, opinions and testimony.

2. My experience in the Banking industry encompasses over 30 years employment for federally insured institutions. I was formerly Business Development Manger with Indy Mac Bank FSB, for over ten years and am currently employed as a Consultant for Housing Mortgage Consultants Inc. of which I own. I have personal knowledge and experience to render opinions in the topic areas related the securitization of mortgage loans, derivative securities, the securities industry, real property law, Uniform Commercial Code practices, predatory lending practices,

Affidavit of William McCaffrey

1 Truth in Lending Act requirements, loan origination and underwriting, accounting
2 in the context of securitization and pooling and servicing of securitized loans,
3 assignment and assumption of securitized loans, creation of trusts under deeds of
4 trust, pooling and agreements, and issuance of asset backed securities and
5 specifically mortgage-backed securities by special purpose vehicles in which an
6 entity is named as trustee for holders of certificates of mortgage backed securities,
7 the economics of securitized residential mortgages during the period of 2001-2008,
8 appraisal fraud, and its effect on APR disclosure, usury, exceeding the legal limit for
9 interest charged, foreclosure of securitized, non-securitized residential mortgages.

10 3. I have been qualified to testify in Maricopa County Superior Court, and US District
11 Court. In the past few years, I have served as Expert Witness in numerous civil cases.
12 I have testified at trial in Federal and Superior Court including Nevada and Arizona.
13 Superior Court Cases include *Marshall and Isley Bank v. Izzo, Slikker v. Kondaur,*
14 *Brokalakis v. National City Mortgage, and Wells Fargo Bank v. Dutson.* Superior Court
15 Judges' Ronan, Garcia, and Budoff, as well as Commissioners' Davis, Ellis, and
16 Hamner have affirmed my expert testimony. Further, I've offered expert testimony
17 in the US District Court of Nevada under Judge Riegler, in *Charov v. Perry.*

18 4. I have reviewed thousands of Mortgage Assignments and I am familiar with such
19 documents and how they are properly prepared and signed.

20 I have reviewed the initial pleadings and loan documents provided as to the
21 property located at 1311 S. CLAIBORN AVE, GILBERT, AZ 85296, which is the
22 subject of this lawsuit, and have conducted a preliminary audit of the documents.
23 Finding the following:

24 5. GS Mortgage Securities Corp Asset-Backed Certificates series GSAA Home Equity
25 Trust 2007-9 created (and closed) in 2007 is very unlikely to have acquired this non-
26 performing loan when the loan was already in default. From my knowledge and
27 experience with mortgage-backed securitized trusts, such acquisition of a non-
28 performing loan is prohibited, particularly after the closing date of the Trust. The

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1 present case appears to be another example of a trust failing to produce the
2 Assignment that should have been created and obtained in 2007. The Assignment
3 Date is almost certainly incorrect.

4
5 6. According to New York Trust law, EPTL 7-1.2, "Every disposition of property shall
6 be made directly to the person in whom the right to the possession and income is
7 intended to be vested and not to another in trust for such person. If made to any
8 person in trust for another not estate or interest vests in the trustee."

9
10 As a result of the trust law, the Pooling and Servicing Agreements allow for
11 indorsements in blank for the notes. The Pooling and Servicing Agreements also
12 state that all intervening assignments and indorsements must be present. THIS HAS
13 NOT BEEN FOLLOWED. Notes such as RACHAEL A. EARL, are commonly indorsed in
14 blank or they have attached a blank Allonge.

15
16 7. In thousands of Assignments I have examined, new "replacement" Assignments
17 have been prepared and presented to Courts without any disclosure to the Courts or
18 to the Homeowners that the original Assignments were lost

19
20 8. Frequently, mortgage assignments for Trusts cannot be produced and
21 Assignments from mortgage servicing companies such as LENDER PROCESSING
22 SERIVICES (LPS) are hired to recreate the absent assignments. LENDER
23 PROCESSING SERIVICES (LPS) created these documents. In the vast majority of
24 cases, the individuals signing these documents as a representative of the
25 GRANTOR/ASSIGNOR are actually working for the GRANTEE/ASSIGNEE
26 bank/trustee. These individuals fail to disclose that they are working on behalf of
27 the GRANTEE.

28 9. TRUSTEE'S DEED UPON SALE IS INCORRECT:

1 (1) Investors who purchased asset backed securities in which ownership
2 of the loans were described with sufficient specificity as to at least express the
3 intent to convey ownership of the obligation as evidenced by the promissory note
4 and an interest in real property consisting of a security interest held by an entity
5 that was described as the beneficiary of a Trust created by an instrument entitled
6 Deed of Trust;

7 (2) Insurers that paid some party on behalf of said investors;

8 (3) Counterparties on credit default swaps;

9 (4) Conveyances or constructive trusts arising by operation of law
10 through cross collateralization and over-collateralization within the aggregate asset
11 pools or later within the Special Purpose Vehicle tranches "tranches" is an industry
12 term of art referring to the types of division within a Special Purpose Vehicle);

13 (5) United States Federal Reserve, which has extended credit on said
14 troubled assets and has exercised options to purchase said troubled assets;

15 (6) Any other party that has traded in mortgage backed securities from
16 the aggregated pools or securitized tranches containing interests in the loans.

17 a. WELLS FARGO BANK, NA, DEUTSCHE BANK NATIONAL TRUST COMPANY,
18 THE BANK OF NEW YORK TRUST COMPANY, NATIONAL ASSOCIATION, and US
19 BANK, its successors in interest, and MERS Inc, do not fall within any of the
20 classifications of holders in due course on the subject loan.

21 b. WELLS FARGO BANK, N.A DEUTSCHE BANK NATIONAL TRUST COMPANY,
22 THE BANK OF NEW YORK TRUST COMPANY, NATIONAL ASSOCIATION, and US
23 BANK. its successors in interest, and MERS Inc, have not suffered any financial loss
24 relating to the loan.

25 c. WELLS FARGO BANK, N.A. DEUTSCHE BANK NATIONAL TRUST COMPANY,
26 THE BANK OF NEW YORK TRUST COMPANY, NATIONAL ASSOCIATION, and US
27 BANK, its successors in interest, and MERS Inc, have never been the real party in
28 interest as a lender or financial institution underwriting a loan while funding same
with respect to the subject loan;

d. WELLS FARGO BANK, N.A. DEUTSCHE BANK NATIONAL TRUST COMPANY,
THE BANK OF NEW YORK TRUST COMPANY, NATIONAL ASSOCIATION, and US

Affidavit of William McCaffrey

1 BANK, its successors in interest, and MERS Inc, suffered no monetary loss through
2 non-performance of the loan;

3 e. WELLS FARGO BANK, N.A DEUTSCHE BANK NATIONAL TRUST COMPANY,
4 THE BANK OF NEW YORK TRUST COMPANY, NATIONAL ASSOCIATION, and US
5 BANK. its successors in interest, and MERS Inc, has received fees and profits relating
6 to the loan;

7 f. The existence and identity of the real parties in interest was withheld in the
8 closing and servicing of the loan.

9 g. This loan does not fall in the category of loans intending to be covered by
10 Arizona law providing for non-judicial remedies. Without giving notice to all
11 potentially interested stakeholders using service of process, a non-judicial
12 foreclosure of a securitized loan does not dispose of the matter. Since there is no
13 procedure for service of process without a lawsuit, the only procedure available is
14 judicial.

15 h. RACHAEL A. EARL has no knowledge, but has demanded information from
16 the loan servicers and its agent and done due diligence to determine whether the
17 note, security interest, or obligation has been extinguished or paid in whole or in
18 part by co-obligors, insurers and/or federal bailout. The "election" of non-judicial
19 process shifts the burden to the borrowers in the loans to allege facts that are solely
20 within the knowledge of the lenders that are intentionally withheld to them.

21 i. In the securitization of the loan, the rights of various named Trustees have
22 been superseded by succeeding trustees ending with the Trustee for the holders of
23 mortgage backed securities in the recorded documents in the present case, whose
24 powers are limited to ONLY what the certificate holders authorize. Accordingly, the
25 only potential party to a foreclosure wherein the allege financial injury and
26 therefore a right to collect the obligation, enforce the note or enforce the security
27 instrument is either a party who has actually lost money or stands to lose money, or
28 an authorized representative who can show such authority and is answerable to the
claims, affirmative defenses and counterclaims of the borrowers for such causes of
action or defenses as might be applicable.

1 18. All factual testimony or statements made in this declaration are true and correct
2 to the best of my knowledge and belief. All opinions stated herein are based upon a
3 reasonable degree of probability or a high likelihood of probability. I have no direct
4 or indirect interest in the outcome of the case for which I am offering my
5 observations, analysis, opinions and testimony

6 FURTHER AFFIANT SAYETH NAUGHT.

7
8 
9 _____
10 William McCaffrey

11 SWORN TO AND SUBSCRIBED before me, the undersigned notary public, this 4th day
12 of March 2011.



13 
14 _____
15 Notary Public

Affidavit of William McCaffrey

EXHIBIT 2

LAW OFFICES OF KEVIN JENSEN, PLLC

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Kevin Jensen, State Bar No. 021524

UNITED STATES BANKRUPTCY COURT

DISTRICT OF ARIZONA

RACHAEL A. EARL

Real Property Located:

*1311 S. CLAIBORNE AVENUE
GILBERT, ARIZONA
85296*

Case No.: 2:10-bk-27333

**DECLARATION OF CURTIS
BAGGETT**

I, Curtis Baggett, having firsthand knowledge of the facts stated herein, being over the age of 21 years and being of sound mind states as follows:

- I am a document examiner and expert witness, and a skilled authority in handwriting identification, who has examined documents in over 3,500 cases in all 50 states, Washington D.C., the Bahamas, Brazil, Canada, Chile, England, Ireland, Mexico, Pakistan, Puerto Rico, Thailand , New Zealand, Korea, China, Australia, and Denmark.
- I once held the position as Dean of the School of Forensic Document Examination at Handwriting University. In addition to lecturing and teaching document examination, I have analyzed handwriting for over 30 years. I have been qualified as an expert witness in Justice of the Peace, Municipal, District, State, U.S. District, and Federal Bankruptcy Courts.
- I am a consultant as a forensic document examiner for the number one television show, "CSI: Crime Scene Investigation," and have appeared as a handwriting expert on WOLF-BLITZER-CNN; CHARLES GIBSON-ABC, INSIDE EDITION, CBS, CNBC, FOX, JUDGE ALEX, TEXAS JUSTIC and GOOD MORNING TEXAS. I am the co-author of "Handwriting Certification

Home Study Course,” and have been a guest on various other television and radio programs discussing handwriting and forensic document examination.

- My education and training in document examination and psychology include: U.S. Army, Military Police Officer’s School; B.A. and M.Ed., McNeese State University, Lake Charles, Louisiana; and post-graduate studies at the University of Houston, Houston, Texas. My credentials and resume are attached, immediately following this affidavit as **Exhibit 1**.

5. I have thoroughly reviewed the Trustee’s Deed Upon Sale for Rachael A. Earl recorded at the Maricopa County Recorder’s office on January 15, 2010, Recording Number 20100035162, labeled **Exhibit 2**.

6. I have thoroughly reviewed the digital signature of Michael A. Bosco, Jr., and the date and time stamp on the known documents to determine if the author of the Michael A. Bosco, Jr. signature caused his digital signature to be affixed to the Trustee’s Deed before the purported sale actually took place, and if the Notary, Paula Gruntmeir, processed sworn statements in compliance with the laws of the State of Arizona at the exact same second as the Michael A. Bosco, Jr. signature was recorded on the document.

7. Based upon my thorough analysis of these items, and from an application of accepted forensic document examination tools, principles and techniques, it is my professional expert opinion that the Rachael A. Earl Trustee’s Deed Upon Sale is a fraudulent document. The Deed was issued, signed, dated, and purported to have been notarized more than four hours before the sale was scheduled. Trustee Michael A. Bosco, Jr. swears the property “was” sold at auction to the highest bidder on January 14, 2010, and at the exact same time which he signed, Bosco had his signature witnessed, notarized, and stamped at 04:50.37 -07:00.

8. Based upon our research, I have determined the exact time stamp to indicate a time of 4:50 a.m. and 37 seconds, with the -07:00 designation indicating seven hours behind Greenwich Mean Time, UTC, or Zulu (Military) Time, thereby designating that the time indicated reflects Mountain Standard Time.

9. Furthermore, Michael A. Bosco, Jr. performed similar transactions on documents labeled **Exhibits 3-14** and on each Deed Bosco swears each sale was completed and verified in the presence of Notary Public Paula Gruntmeir on January 14, 2010 at approximately 4:50 a.m. Thirteen Deeds were conveyed, signed by both Bosco and Gruntmeir, and time stamped within 39 seconds of each other.

10. In my opinion, it is literally impossible for a Notary to read, verify, and sign every document referenced herein, and record in a journal at the time of notarization the details of the transaction in 2-3 seconds, the time recorded between documents.

11. In my opinion, it is literally impossible to have conveyed a property more

than four hours prior to a legally scheduled and posted sale, and to physically swear to and sign (electronically or otherwise) the document.

12. I am willing to testify to this fact in a court of law and I will prove to the Court that my opinion is correct.

DATED this 3 day of June, 2011

By Curtis Baggett
Curtis Baggett

Subscribed and sworn to before me by Curtis Baggett, a man proven to me to be the above signer, or known to me, on this 3rd day of June, 2011.

Wendy S. Carlson
Notary Public for the State of Texas
My Commission Expires: March 06, 2013

